UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1992/25*
5 August 1992

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-fourth session
Item 11 of the provisional agenda

THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

Report on the independence of the judiciary and the protection of practising lawyers, prepared by Mr. Louis Joinet pursuant to resolution 1991/35 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

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GE.92-12940/4667B

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Introduction

1. By its resolution 1991/35 of 29 August 1991 (para. 5), the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to entrust Mr. Louis Joinet with the preparation of a report to bring to the attention of the Sub-Commission information on practices and measures which have served to strengthen or to weaken the independence of the judiciary and the legal profession in accordance with United Nations standards, paying particular attention to those elements set out in paragraph 302 of his previous report, which suggested that the Sub-Commission should be provided with fuller information on such matters as: the judicial reforms undertaken as part of the process of democratization; the independence of the judiciary and the protection of lawyers during states of emergency, in the administration of military justice and in the struggle against organized crime; the application of safeguards concerning the statutory conditions of judges, the material independence of the judiciary and the role of prosecutors in criminal procedure; and minimum guarantees of access to the assistance of a lawyer.

2. By its resolution 1992/33 (para. 2), the Commission on Human Rights endorsed that decision.

3. In 1990, at its forty-second session, the Sub-Commission had requested the Special Rapporteur to make a system-wide analysis of the advisory service and technical assistance programmes of the United Nations as regards the independence of the judiciary and the protection of lawyers, propose means by which the cooperation between the programmes could be enhanced, and set forth guidelines and criteria to be taken into account in the provision of these services (resolution 1990/23, para. 4 (a)). Final conclusions and recommendations were submitted in that connection in the previous report (E/CN.4/Sub.2/1991/30, paras. 286-300 and 303-311). The mandate is thus considered to have been fulfilled in that regard. It is to be welcomed that the views expressed in those recommendations were in part taken into account in the report by the Secretary-General on advisory services and technical assistance submitted at the forty-eighth session of the Commission on Human Rights (E/CN.4/1992/49), as well as in the resolutions adopted by the Commission on that subject (1992/80) and on the administration of justice (1992/31, in particular paragraph 8 inviting the Commission on Crime Prevention and Criminal Justice to explore ways and means of cooperating with the human rights programme). The Special Rapporteur is convinced that, notwithstanding difficult material conditions, the efforts undertaken by the Secretariat will enable the United Nations to ensure better promotion of human rights, in particular in the key field of the independence of the judiciary and the protection of lawyers.

4. This report, devoted mainly to case studies, supplements the previous one by providing the Sub-Commission with the fullest information possible. In its resolution 1991/35, the Sub-Commission inter alia expressed the wish that particular attention should be paid to paragraph 302 of the previous report, which had proposed certain topics on which the Sub-Commission might be given fuller information. This is the main object of the present report, although because not enough relevant information was received, some topics are treated briefly or not at all.

5. As regards the choice of cases dealt with in part II of the report, what might appear to be a selective approach can be explained by the fact that, to the author's regret, it only deals with countries on which information was received, even though it is common knowledge that problems are being encountered in the application of the specific regime of independence and protection in many other countries.

6. It should also be pointed out that, apart from the independence of the judiciary, the mandate this year refers to the protection, not just of lawyers, but of the "legal profession". It was extended in the light of the discussion at the Sub-Commission's forty-third session and suggestions to include in the report cases concerning in particular the protection of court officers. However, as no information was provided to the Special Rapporteur on such cases, the question will not be dealt with this year.

7. Concerning the interpretation of the other parts of the mandate, which remain unchanged, reference should be made to the previous report (E/CN.4/1991/30, paras. 9-22).

8. This report is based on documents emanating from various sources and containing concordant information, but with special reference to the replies to the Secretary-General's notes verbales and letters transmitted by the following Governments and non-governmental organizations or professional associations:

States: South Africa, Brunei Darussalam, Colombia, France, Ireland, Japan, Portugal, Romania, Rwanda, Sudan, Chad, Turkey, Uruguay;

Non-governmental organizations and professional associations: Britain and Ireland Human Rights Project, International Commission of Jurists, Council of the Bars and Law Societies of the European Community, International Federation of Human Rights, Hong Kong Bar Association, Japan Federation of Bar Associations, Law Society of Lesotho, Law Society of New South Wales, Law Society of Scotland, Lawyers Committee for Human Rights, Liberty, Norwegian Bar Association, National Bar Association of Belgium.

I. CASES OF MEASURES AND PRACTICES AIMED AT STRENGTHENING THE SAFEGUARDS OF INDEPENDENCE AND PROTECTION

South Africa (20 November 1991)

9. In the extremely detailed information transmitted by the Government, particular note will be taken of the major reforms that have been or are being carried out to put an end to racial discrimination in the administration of justice and to broaden access to justice, in particular access to the services of lawyers. In that regard, it is to be welcomed that the Government has taken the positive initiative of deciding to call on 18 committees of experts composed of leading academics chosen without discrimination for a full review of all South African private and public law and to use their reports as a basis for reform.

10. Regarding the appointment of Supreme Court judges, which under section 10 of Act No. 59 of 1959 is still the responsibility of the Minister of Justice, the Government indicates that reform measures are currently being studied, in conjunction with various lawyers' organizations, to minimize the risks involved in the appointment of judges by the executive branch alone. In addition, the Minister of Justice gave an undertaking at the 1991 session of Parliament to choose judges from among the members of all communities and not just whites.

11. Concerning the magistrates' courts, which are under the authority of the Ministry of Justice, the Minister also announced that legislation was being drafted and that bills would be introduced shortly to strengthen their independence, in particular as regards the status of magistrates serving in those courts.

12. With regard to access to justice, Act No. 66 of 1991 aims to make the law less expensive and more expeditious in some civil cases by establishing a mediation procedure in which the costs are borne jointly by the parties and the State, to be followed up, if this fails, by a summary procedure. The aim, according to the Government, is to facilitate access to the law for the poorest people, mainly in the black community.

13. Likewise, in divorce cases, the abolition of the last three courts reserved exclusively for blacks, which had dealt with an average of 13,000 cases per year, re-establishes equal access to the law and should facilitate the administration of justice.

14. The reforms and studies announced are evidence of the Government's political will to abolish a system incompatible with the international instruments. The appointment to the Supreme Court of Judge Mohammed on 12 August 1991, and to the Johannesburg Magistrates' Court of Mrs. Zola Moletsana, the first woman to receive such an appointment, are encouraging initial steps. It will, however, be necessary to wait until the changes are institutionalized to determine whether criticism is no longer justified. It is strongly hoped that the Government will continue to cooperate with the Special Rapporteur, should his mandate be renewed, concerning the progress of the reforms and the work of the committees and action taken.

15. Lastly, with regard to access to lawyers' services, it will be interesting to follow the implementation by the Legal Aid Bureau of a pilot project started in the Johannesburg courts in June 1991. This provides for the official appointment, on a permanent basis, of ten lawyers for two years to provide legal assistance in magistrates' courts for poor people accused of serious offences carrying long terms of imprisonment. This system should cost only a third as much as the one hitherto applied by the Legal Aid Bureau, which involved appointing and paying the fees of private lawyers. Two and a half million rands have been allocated for the project.

Colombia (6 August 1991)

16. The Special Rapporteur has already underlined in his previous report the positive measures taken by the Government to strengthen the independence of the judiciary and the protection of lawyers (E/CN.4/Sub.2/1991/30, paras. 155-159).

17. In this report, the Special Rapporteur wishes to thank the Government again for the detailed communication it transmitted to him under the "adversary procedure". While the Government's reply, received during the Sub-Commission's forty-third session, reached the Special Rapporteur too late for him to be able to publish it in extenso in an addendum, it was nevertheless taken into account in the oral presentation of the report to the Sub-Commission. In its reply the Government describes the main features of the new constitutional provisions concerning the independence of the judiciary. In addition to affirming the principle of independence, the new Constitution in particular establishes the principle of the appointment of judges by a Supreme Council of Justice and their promotion according to merit, and guarantees their irremovability.

18. The precise information provided by the Government on efforts to combat practices that have weakened the safeguards against "physical pressure" being brought to bear on judges and lawyers, as mentioned in our previous report (E/CN.4/Sub.2/1991/30, paras. 213-221), is especially welcome. The Government reports on the steps taken by the Colombian courts in the cases of the judges Maria Elena Diaz Perez and Carlos Campo Donado; and the lawyers Alirio de Jesus Pedraza Becerra, Abelardo Daza Valderrama, Cesar Arcadio Ofron, Alvaro Caicedo Millan and Flavio Hernando Merino Porras. The Government reaffirms that its aim is to avoid impunity in all circumstances, especially in cases of human rights violations committed against judges and lawyers, as they are a direct threat to democratic institutions.

19. The Special Rapporteur would be pleased to receive any additional information that might be brought to his attention by the Government and remains at its disposal to provide it with information necessary to enable it to investigate the other cases mentioned in the previous report.

France

20. The French Government has instituted a reform of the regulations on the judiciary involving the largest review ever undertaken of Ordinance No. 58-1270 of 22 December 1958. The purpose, as explained in the commentary on the proposed legislation, is to permit "better use of professional expertise to guarantee a quality of justice that will meet the expectations of the citizen better".

21. The reform has four main objectives: to strengthen the independence of the judiciary (election of members of the judiciary to serve on the promotion board or disciplinary board of the government procurator's department instead of appointment by the Minister of Justice, establishment of a consultative board of the government procurator's office, strengthening of disciplinary safeguards); to make recruitment and career development more transparent (lateral recruitment, simplification of the hierarchy and rules of promotion,

transparency of personal files and proposals for appointments); to enhance the exercise of judicial functions; and to make the judiciary more open (establishment of a judiciary secondment system, etc.).

22. For the longer term, the President of the Republic has announced a constitutional reform to strengthen the independence of the Supreme Council of Justice. Lastly, the period of initial training has been extended from 24 to 27 months and further training has been considerably improved.

Ireland (17 July 1991)

23. In its reply, the Government states that the independence of the judiciary is guaranteed in particular by articles 35 and 36 of the Constitution, as well as by the Courts (Establishment and Constitution) Act of 1961 and by the Juries Act of 1976.

Japan (2 August 1991)

Independence of the judiciary

24. In its reply, the Government refers to the constitutional and legislative provisions guaranteeing the independence of the judiciary on the principle of strict separation of powers. The organization of justice is thus the responsibility of the Supreme Court - in contrast, for example, to the French and German systems, which are largely under the authority of the executive branch.

25. In addition, the power of the courts in matters relating to supervision of the constitutionality of laws reflects the superiority of the judiciary over the other branches, as in the United States system.

26. The appointment of lower court judges carries a de facto, if not a de jure safeguard, in that the Cabinet in practice automatically accepts the choice of the Supreme Court.

27. Furthermore, the Constitution and the law establish the principles of irremovability and "adequate compensation". The Government notes in this regard that the system of remuneration is based exclusively on seniority, and not on grade as in France and Germany.

28. Lastly, personal independence is safeguarded by article 76, paragraph 3, of the Constitution, which states that

> "All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws".

On several occasions when the conduct of the executive branch has threatened the independence of the judiciary, for example in March 1949 and July 1953, the decisions of the Supreme Court have strengthened this normative provision.

29. While the Government recognizes that extremists have fired on judges' homes and disrupted court proceedings, such occurrences are rare and no judge has ever been killed.

30. In answer to criticism that the monopoly of the Supreme Court and its general secretariat over the organization of justice might threaten the independence of judges, the Government states that the Constitution and the laws are the basis of the institutional power of the Supreme Court and that the sole function of the general secretariat is to assist the Conference of Court Judges, the highest decision-making body in the administration of justice.

31. Lastly, the Government states that reforms of civil and penal procedure are under way with the aim of improving the functioning of the courts and facilitating access to them for ordinary people.

Independence of practising lawyers

32. The practice of the profession is governed by law and entry into it involves taking a competitive examination and completing a two-year training course at the Legal Research and Practice Institute of the Supreme Court. This training is, moreover, identical for candidates for the professions of lawyer and judge.

33. The main safeguard of the autonomy of lawyers lies, according to the Government, in the obligation to register with one of the 52 bar associations established for each district court and also with the Japan Federation of Bar Associations, institutions whose role is to supervise, assist and provide coordination for their 14,000 members, with complete independence from the authorities. The communication received by the Special Rapporteur from the Japan Federation of Bar Associations, which is very critical of the Government and the present system of judicial organization (see below), demonstrates the real collective independence of lawyers.

Malaysia

34. According to unofficial sources, the Minister of Justice on 11 November 1991, asserting that the Malaysian Bar Council was tarnishing the country's image and impugning the dignity of the Prime Minister, the judiciary and the Government, announced his intention of amending the 1977 Legal Profession Act, under which the Bar Council had been established as a non-governmental professional association, by abrogating the clause providing for the independence of the legal profession, inter alia from political parties, and instituting a disciplinary procedure under which the Government would be enabled to impose penalties on lawyers. The aim was evidently to weaken the Bar Council, for example in its contribution to public debate and its activities in the fields of law, administration of justice and human rights, since it showed no hesitation in censuring the Government or opposing it in court. National and international protests are said to have dissuaded the Minister from carrying out his intent; the proposals for amendment of the 1977 Law were not submitted to the Parliament, thus ensuring respect for freedom of association and expression as provided for by international instruments, including principle 23 of the Basic Principles on the Role of Lawyers ("Lawyer Principles").

35. Energetic action by professional associations plays a major part in strengthening safeguards of independence and protection; such safeguards are enhanced when a Government withdraws draft legislation likely to undermine them. The Malaysian Government's withdrawal is thus to its credit, which explains why this account appears in the positive part of the report.

Norway (Norwegian Bar Association) (30 January 1992)

36. Although the Norwegian Bar Association refers to government measures or practices that might be thought likely to weaken safeguards of independence and protection, which as such should appear in the second part of the report, it also describes the action taken by the Association to counter such measures and practices in order to strengthen those safeguards. The Association reports, for example, that in the name of freedom of association, it has brought a case before the courts to contest a government decision requesting the Association to amend one of the provisions of its regulations, under which it may require its members to withdraw their services ("strike authority"), for example when it considers the hourly fees for State legal aid unsatisfactory. The case is to be heard shortly.

37. The Association further considers that disciplinary procedures applicable to lawyers do not conform to United Nations standards. Since, through its efforts, a commission has been appointed to examine these matters under the chairmanship of a Supreme Court judge, the Association would prefer to make no further comment on the matter at present.

38. The Association has, in addition, defended a lawyer, Ingebjorg Roll-Matthiesen, appointed by law a member of the judiciary commission. With assistance from the Ombudsman, the Association has succeeded in having quashed a decision by the Ministry of Justice revoking that appointment in circumstances contravening principles 10 and 12 of the Basic Principles on the Independence of the Judiciary 2/ ("Judiciary Principles"), a positive step in the context of the present report.

Portugal (14 August 1991)

39. In preparing its report, the Portuguese Government paid special attention to United Nations standards, including the "Judiciary Principles" and the "Lawyer Principles, which served as its frame of reference.

Independence and impartiality of the judiciary

40. Under the Constitution, the courts are the organs of supreme authority that have the power to administer justice in the name of the people. It is therefore incumbent on them to safeguard rights and interests that are legally protected, to punish violations of democratic legality and to resolve public and private conflicts of interest. The courts are independent and subject only to the law (arts. 205 and 206). Their decisions are binding on all public and private bodies and prevail over the decisions of all other authorities.

41. Under the Regulations governing the judiciary, judges are subject solely to the Constitution and to the law and are not under anyone's orders or instructions (Law 21/858 of 30 July 1985, art. 4).

42. The principle of independence of the judiciary having thus been established, the Government lists the principles designed to strengthen it, which embrace all areas protected by international standards, in particular: irremovability, conditions of service (for example, career advancement is based on competitive examination and on merit) and tenure; discipline, suspension and removal; professional secrecy and immunity; and freedom of expression and association.

Role of lawyers

43. The Government has provided information on practice of the legal profession, access to information, freedom of professional association and disciplinary procedures. The independence and protection of lawyers in the practice of their profession is safeguarded by the Regulations governing the Legal Profession adopted in 1984 (Decree-Law 84/84 of 16 March 1984). In particular, one of a lawyer's duties to the community is to "protest against violations of human rights and combat arbitrary acts that come to his notice in the practice of his profession" (art. 78).

44. Moreover, in the context of a lawyer's duties to his client, although professional secrecy is in principle obligatory, it ceases to be so in cases where it is absolutely necessary to protect the dignity, rights and legitimate interests of the lawyer, his clients or their representatives (art. 81, para. 4). In addition, an essential safeguard is provided by prohibiting the seizure of correspondence relating to practice of the profession, including correspondence between the lawyer and his principal or anyone wishing him to act as his agent (art. 57).

45. With regard to the lawyer's access to information, the Government reports in particular that lawyers are entitled to communicate in person and in private with a client, even in cases where he is held in custody in a civil or military establishment (art. 62).

46. With regard to freedom of association, the Bar Association, a free and self-governing body independent of the State, has as its task to defend the rule of law and individual rights and safeguards, to collaborate in the administration of justice and to watch over the social function, dignity and prestige of the legal profession and to promote adherence to its ethical principles. The Bar Association is competent with regard to disciplinary procedures; appeal may be made against final and enforceable decisions of organs of the Bar Association before an administrative tribunal (art. 5).

Romania (29 July 1991)

(a) Independence of the judiciary

47. In its reply, the Government recognizes the "Judiciary Principles" as the first specific intergovernmental standards relating to independence of the judiciary and indicated its intention of observing those rules to ensure their implementation in practice in conformity with Economic and Social Council resolution 1989/60.

48. The Government describes the principal provisions of the draft Constitution, which include affirmation of the principle of independence of the judiciary, a principle upheld by the rule of irremovability and a ban on special courts.

49. Similarly, the part played by the Government Procurator's Department has now been defined in a manner, which is satisfactory in relation to the Guidelines on the Role of Prosecutors 3/ ("Prosecutor Principles"), since its members are instructed to defend the rule of law and civil rights and liberties. In addition, procurators now come under the Minister of Justice and not the Minister of Internal Affairs. Since the Government's communication was sent, the Constitution has been adopted and the above principles solemnly affirmed. The Government notes that the independence of the judiciary will also be safeguarded by legislation on the organization of the judiciary, still in draft form at the time of the communication.

50. The purpose of the system of justice is defined in the proposed legislation as being to defend fundamental human rights and freedoms through settlement of all disputes concerning legal relations of a civil, commercial, labour, family, administrative and criminal nature. It covers the conditions relating to the qualifications, selection and training of members of the judiciary, promotion (a career structure based on seniority and merit and subject to consent), change of post (subject to consent), disciplinary procedures and immunity.

51. The information provided by the Government shows it has a firm political will to establish the independence of the judiciary after several decades in which its independence was flouted. That resolve also appeared to have been the motive for the replacement in January 1990 of the majority of judges in senior positions through transfer, early retirement and recruitment, with a view to combating interference, influence, pressure or threats intended to affect the course of legal proceedings and ending the corruption formerly prevalent among the judiciary.

52. This report will not seek to deal in general with the question of the advisability of systematically replacing members of the judiciary in restored democracies. Both sides of the question were set out at the Popowo symposium organized in October 1991 by European Judges for Democracy and Freedom: on the one hand, a response has to be made to public demand for heads to fall, so that the country can get off to a fresh start, and on the other, the authorities in the new democracies have to ensure continuity of the State, and in so doing, one might add, abide by the rules of democracy, an important feature of which is the principle of the irremovability of members of the judiciary. It must, however, be made clear, as those attending the Popowo symposium concluded: (i) that if a purge is essential it must be governed by precise criteria and procedures compatible with the concept of a fair and just trial as defined in international and regional instruments and, where applicable, the rulings of the bodies monitoring the implementation of those instruments; and (ii) that in any event the point is not to replace "bad" judges by "good" ones, but to change systems of justice in order to avoid former mistakes.

53. A number of aspects of the proposed legislation on the organization of the judiciary are worth clarifying. With regard to the principle of irremovability, the Government has, without indicating precisely what they are, made provision for situations where a judge may, as an exceptional measure, be seconded to a similar post in another jurisdiction for two months in any year, his consent being required only if the period is to be extended. That provision would not appear to be compatible with principle 12 of the "Judiciary Principles".

54. As regards immunity, the principle of which is safeguarded by the proposed legislation, there is provision for the investigation, detention or arrest of a member of the judiciary merely on the instructions of the Ministry of Justice. The same provision also gives cause for concern in stating that the "initiation of criminal proceedings against a member of the judiciary necessarily includes his suspension from his duties; in the event of his innocence being established he will be reinstated with all his former entitlements, including his salary for the period of suspension". In the absence of further background details from the Government, these provisions would appear to be contrary to principles 16 (immunity), 17 and 18 (discipline and suspension) of the "Judiciary Principles".

55. With regard to freedom of expression, the proposed legislation provides that in order to "ensure the independence and impartiality of members of the judiciary and to protect them from interference or pressure", "they are forbidden to belong to any political party or to engage in any activity of a political nature". It will be recalled that principle 8 of the "Judiciary Principles" guarantees members of the judiciary, "like other citizens ... freedom of expression, belief, association and assembly", the only bar to exercise of those rights being the obligation for judges to conduct themselves at all times in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

56. It would be simplistic to maintain that a member of the judiciary belonging to a political party was necessarily "dependent" and that contrariwise a magistrate with no political affiliations was necessarily independent. Here we would refer to another finding of the Popowo symposium, that

> "the real point is that the judiciary should reflect the diversity and pluralism of society at large and that it should acknowledge that the act of trying someone is not just an exercise of legal reasoning alone but a social act".

Since the Government is willing to cooperate with the international community in dealing with these problems, it would be useful if it would provide some information on the various provisions of the proposed legislation.

(b) Protection of lawyers in the practice of their profession

57. The Constitution includes a guarantee of the right to defence (art. 24) among the fundamental freedoms and duties listed in title II; this is supplemented by Law No. 12/10 October 1990 revising the Code of Criminal

Procedure and the Decree-Law of 1 March 1990 abrogating several provisions of Decree No. 281/1954 and restoring independence to the profession.

58. The Decree-Law establishes the main safeguards for the protection of lawyers provided for in the "Lawyer Principles", including access to the services of a lawyer, a number of safeguards in criminal justice matters and lack of discrimination in access to the profession. Among the safeguards associated with practice of the profession may be noted in particular "the right of lawyers to defend their clients without fear of persecution or repression". In this context, provision is made for lawyers to "enjoy the same protection as persons whose duties imply the exercise of State authority, without however being assimilated to officials or other salaried employees" (art. 2, para. 3). It would be interesting to know the scope of the provision in actual practice.

59. The organization of the profession, based on the principle of self-government, is the task of the Romanian Union of Lawyers, composed of all lawyers belonging to the country's bar associations. Lastly, the ceilings on income imposed by the previous regime have been abolished.

United Kingdom of Great Britain and Northern Ireland

60. The Law Society of Scotland, in a communication dated 13 February 1992, notes that in Scotland the independence of judges and lawyers is the cornerstone of a system based on the concept of the citizen-judge. Judges are selected from among practising lawyers and are assigned to the lower courts. Their careers are generally pursued at the place of their initial assignment, which serves to strengthen their independence. The fact that judges are seen to be independent increases the respect in which they are held by the public and helps to ensure the proper administration of the law. That is particularly the case with regard to public prosecutors. Furthermore, lawyers enjoy absolute independence, even though it has been suggested that the introduction of State-funded legal aid might weaken such independence.

Russia

61. In its communication of 24 April 1992, the Lawyers Committee for Human Rights discusses the procedures for reform of the judiciary: although there were still major obstacles to establishing a genuinely independent judiciary, the first steps had been taken and should be recognized as such by the international community.

62. Among the problems inherited from the former system of justice by Russia and the other States of the former Soviet Union, the above non-governmental organization notes: 1. that the previous system had been established to serve the interests of a repressive State, with the result that the judiciary did not enjoy the trust of the general public; 2. that it was also regarded as incapable of dealing with increasing delinquency and a growing crime rate; 3. that the system relied on over-zealous accusatory procedures; 4. that, as a result of rapid economic change, the courts were losing all their skilled staff; 5. that such staff were working in deplorable conditions from both the material and the security point of view; 6. that most serving judges had inadequate legal training and were of suspect moral standing because of their

connection with the former regime. Those problems were compounded, in Russia in particular, by a profound disrespect for the law on the part of society at large, bureaucratic interests intransigent in their opposition to reform, the lack of means to finance reform, the lack of qualified jurists to take over as judges, procurators and lawyers, and even the lack of political will to reform the judiciary, given the desperate social needs making reforms in other areas a matter of priority.

63. In this context, the establishment in July 1991 of a Constitutional Court to protect the rule of law and the constitutional rights of citizens marks a break with the former system of justice, which had no court competent to rule on the constitutionality of the Government's laws and acts. This body appears to be one that can be expected to contribute to strengthening the safeguards of the independence of the judiciary and protection of lawyers.

64. The Court is composed of 10 to 15 judges elected by the Congress (13 judges were elected on 30 October 1991). Their term of office expires when they reach the age of 65; they are irremovable, except in exceptional circumstances established by law. Their remuneration may not be reduced during their term of office.

65. The Court is competent to determine the constitutionality of international treaties (before ratification), the laws of the Federation and the federal republics, and the application of the laws of the Federation. Appeal may be made to the Court by the executive and the legislature, or by individuals and legal entities that consider their fundamental rights to have been violated by a court decision or an act of the executive or the legislature, when all other internal remedies have been exhausted. The decisions of the Court are final and immediately applicable in the Federation.

Rwanda (18 June 1991)

(a) Independence of the judiciary

66. In its reply, the Government states that the principle of the independence of the judiciary from the legislative and executive branches is laid down in the Constitution and guaranteed by the President of the Republic (art. 81, paras. 1 and 2).

67. The personal independence of judges is guaranteed by article 37 of the Constitution, paragraph 1 of which states that:

> "In the exercise of their judicial function, judges shall be fully independent of the legislative power and the executive power. They shall have complete freedom to assess cases that come before them and decide the action to be taken, independently of any outside pressure."

Decree-Law No. 06/82 of 7 January 1982 enacting the regulations on judicial staff contains an identical provision (art. 37).

68. It is interesting to note that the independence of government procurators from parties and judges is provided for in article 40, paragraph 1, of the regulations on judicial staff.

69. With regard to the appointment, removal and transfer of members of the judiciary, article 82 of the Constitution states that proposals by the Minister of Justice have to be endorsed by the Supreme Council of Justice before they take effect. As regards promotions, members of the judiciary are assessed by their peers, except for the President of the Court of Cassation and the President of the Court of Appeal, who are not subject to assessment (Decree-Law No. 06/82, art. 84). The Government adds that members of the judiciary cannot in any circumstances be assessed by the Minister of Justice.

(b) Independence of lawyers

70. The Government states that at the time when its communication was sent, there was no bar association in Rwanda, nor any text guaranteeing the independence of lawyers, but that a bill was being considered by the responsible bodies.

Concerning practices that may have weakened their independence

71. The Government is of the opinion that so far no practices liable to weaken the independence of the judiciary have come to light, owing in particular to the role played by the Supreme Council of Justice, which provides "a very important safeguard" in relation to decisions taken by the executive.

72. The Government states, however, that application of the "Judiciary Principles" is scarcely feasible in some cases, because the country lacks adequate resources, e.g. in connection with training and conditions of service. For that reason the Government would like to be able to benefit from the advisory services and technical assistance of the United Nations with regard to the independence of the judiciary and the protection of lawyers.

Chad (24 February 1992)

73. In its reply the Government states that Chad has embodied the principle of the independence of the judiciary in all the fundamental laws that have governed the life of the nation since it became independent.

74. Thus principle of independence from the executive power is established in article 40 of the National Charter, which at present governs the country's institutions and the way they operate. According to the Charter, judges are subject only to the law and are irremovable, and the President of the Republic guarantees their independence. The personal independence of members of the judiciary is reinforced by article 3, paragraph 1, of Ordinance No. 008/PR/MJ/91 of 3 August 1991, enacting the regulations on the judiciary, which states that:

> "Except in the cases provided for by law and subject to the exercise of normal disciplinary power, members of the judiciary and justices of the peace may not be challenged in any way because of the acts they perform in carrying out their duties. Judges may not be called to account for decisions which they give or in which they participate."

75. Assessors enjoy the same legal protection as members of the judiciary when they take part in decisions.

76. As regards the independence of lawyers, the Government points out that it is recognized by article 2 of Decree No. 235-66/PR.MJ of 3 March 1966 establishing the legal profession in the Republic of Chad, according to which "lawyers shall perform their functions freely before all courts in Chad". According to the Government, the independence of lawyers is limited by the terms of their oath,

> "Which forbids them as advocates or counsel to say or publish anything contrary to the law, the regulations, morality, State security or public peace or to deviate from the respect due to the courts and the public authorities".

Uruguay (23 December 1991)

77. Referring to our last year's report, the Government gives some details concerning the seminar on the implementation of international instruments and the administration of justice organized at Montevideo in July 1990 under the programme of advisory services and technical assistance (cf. E/CN.4/Sub.2/1991/30, para. 45). Apart from the fact that, contrary to what we said on the basis of the information we then had, lawyers did in fact take part in the seminar, the Government points out that follow-up measures have been taken at the national level. Thus the Minister for Foreign Affairs presented the seminar's recommendations to the constitution, Codes and Legislation Commission of the Chamber of Representatives, at its invitation, which was the occasion for an exchange of views concerning their application. In addition, a working group was set up to review the progress made in the field of human rights under the technical assistance project of the Centre for Human Rights. We welcome this information, which is precisely in line with the recommendations we made in our last report.

II. CASES OF MEASURES AND PRACTICES THAT SERVE TO WEAKEN THE SAFEGUARDS OF INDEPENDENCE AND PROTECTION

A. Measures and practices serving to weaken the application of safeguards against "pressure" on judges and lawyers

78. The annual reports and urgent appeals put out in particular by the Centre for the Independence of Judges and Lawyers and the Lawyers Committee for Human Rights, together with information from other non-governmental sources, record hundreds of cases of "pressure" in the sense used in this report, i.e. contrary to the "ordinary law" of human rights and the specific regime of protection for judges and the legal profession (in particular, principle 2 of the "Judicary Principles" and principle 16 of the "Lawyers Principles").

79. Thus, between June 1990 and May 1991, non-governmental organizations reported 532 cases of lawyers in 51 countries who had been subjected to such "pressure"; 55 of them were said to have been summarily executed, 103 to have been detained arbitrarily, 8 to have disappeared, 42 to have been attacked, 65 to have received death threats and 234 to have had arbitrary professional penalties imposed upon them.

Colombia

80. In its comments on the third periodic report of Colombia concerning the implementation of the International Covenant on Civil and Political Rights, which it adopted on 9 April 1992, the Human Rights Committee considers that

> "the most important factors for the improvement of the human rights situation in Colombia seem to have been the introduction and establishment of participatory democracy, as well as a firm will to combat all forms of abuse of power, particularly violence by the police, the army and paramilitary units" (M/CCPR/92/18).

With regard to the independence of the judiciary and the protection of the legal profession, we have been able to note a similar willingness on the part of the Government to strengthen the application of the specific regime of independence and protection, and we have duly recognized it, both in our previous report and in this one (chap. I).

81. Despite these efforts, many judges and lawyers are still subjected to serious "pressure". According to the International Commission of Jurists, the drug cartels are the most notorious threat to judges and lawyers. It notes, however, that the great majority of the 36 judges and lawyers assassinated during the year were not investigating the drug traffic, but the activities of paramilitary groups and massacres attributed to the security forces. This observation is a matter of serious concern, as it seems that too often the law enforcement officers involved in such abuses still enjoy impunity. The information received on this point is confirmed by the Human Rights Committee, which also says that it is "concerned" by the fact that

> "the measures that have been taken [to deal with the phenomenon of impunity] do not seem to be sufficient to guarantee that all members of the armed forces who abuse their power and violate citizens' rights will be brought to trial and punished".

The Committee goes on to say that "military courts do not seem to be the most appropriate ones for the protection of citizens' rights in a context where the military itself has violated such rights" (Comments, ibid.). Apart from the involvement of drug traffickers and law enforcement officers in abuses committed against judges and lawyers, guerrilla movements still bear a great deal of the responsibility. Among the various cases reported which are attributable to them, we may note for example the massacre by the Revolutionary Armed Forces of Colombia (FARC) on 26 November 1991 of eight members of a judicial commission of inquiry consisting of judges from the 75th Court of Criminal Investigation and judicial police officers. During the period between June 1990 and May 1991, 58 cases of judges and lawyers being attacked or threatened were recorded by non-governmental organizations; in 28 of these cases the motive was political, including 13 of the 36 murders during this period.

Guatemala

82. In his report on the human rights situation in Guatemala, Christian Tomuschat, independent expert of the Commission on Human Rights,

notes that "many judges have been under serious threat and pressure not only from criminal offenders, but also from local and military authorities. As a result some of them have resigned and some courts have had to be temporarily closed" (E/CN.4/1992/5, para. 189). From the information communicated to us, we would note the case in point of the death threats received by Ernesto Rolando Corzantes Cruz, a procurator, and José Lopez Mendoza, an officer of justice, who were taking part in the judicial inquiry into the murder of the anthropologist Myrna Mack Chang on 11 September 1990, in which the security forces may have been involved. Some judges and police officers concerned with this affair are said to have received such serious threats that they have decided to withdraw from the case. The independent expert also mentions the case of Raul Sao Villagran, President of the Antigua Court of Appeal, who was abducted in Guatemala City in July 1991 and whose body was found two days later showing marks of torture.

Indonesia

83. Following the massacre of civilians by the army at Dili, East Timor, on 12 November 1991, it is reported that the lawyer H.J.C. Princen, who is also President of the Indonesian Institute for the Defence of Human Rights, was the subject of what is described as "official harassment", for having sought to pursue an inquiry into the massacre. Between 21 November and 15 December, he was obliged to report to the National Stability Agency in Djakarta every day except Sunday. He was interrogated for four or five hours a day during this period. H.J.C. Princen, who defended a number of political opponents of the regime, was detained from 1974 to 1976 for taking part in an anti-government demonstration. The Government has forbidden him to travel abroad since 1985. He has received several death threats by telephone. Apart from the fact that they violate principle 16 of the "Lawyer Principles", these practices are particularly harmful in view of the "extreme scarcity of defence lawyers" found by Mr. P. Kooijmans, Special Rapporteur on Torture of the Commission on Human Rights, during his visit to Indonesia and East Timor in November 1991 (E/CN.4/1992/17/Add.1, para. 39). As an example, during his visit the Special Rapporteur talked to persons serving sentences of more than 10 years who had seen their lawyers only once or twice before their trial or had had no legal assistance at all. In such a situation, it is clear that lawyers have to be in a position to perform their functions fully, and principle 17 of the "Lawyer Principles", according to which the authorities have a duty to safeguard lawyers when their security is threatened, takes on full force.

Italy

84. The murder at the end of May 1992 of Judge Falcone, one of the judges responsible for the fight against organized crime (mafia), coming after a series of other attempts on the lives or persons of members of the judiciary or the police forces, is a further indication of the dangers that organized crime can pose for democracy in the world (cf. Colombia, Japan).

Japan

85. The Japan Federation of Bar Associations has noted in recent years a disquieting growth in the number of incidents designed to prevent lawyers from exercising their profession. A survey carried out by the Federation in 1990,

in which all its members participated, recorded 345 cases of interference with the legal profession over the past 10 years, although the actual figure is believed to be still higher. The kind of interference involved, which is said to be the work in particular of criminal organizations and extreme-right groups and to occur above all in cases involving commercial law, especially banking, civil law and family law, includes direct verbal threats and physical attacks. The following incidents were also reported: the walls of a lawyer's office covered with red paint; 30 chicken heads hung outside a lawyer's office; a dead dog's head thrown through an office window. Some bar associations have opened assistance centres to help those of their members who are victims of violence connected with the exercise of their profession.

86. Our attention has also been drawn to the case of Tsutumi Sakamoto, a Yokohama lawyer, reported missing since 3 November 1989 with his wife and baby. He acted for families whose children had joined the religious sect Aum Shinrikyo and had taken on several cases for trade unions. Solidarity committees have been formed to investigate his disappearance, including a national committee with 3,000 members. A petition calling upon the police to pursue further inquiries collected 1,200,000 signatures.

87. These examples of lawyers being identified with their clients or their clients' causes, which is forbidden by principle 18 of the "Lawyer Principles", are disturbing. It will be recalled, also, that under the "Lawyer Principles", "Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference" (principle 16) and that, according to principle 17, "where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities".

Nigeria

88. According to information supplied by several non-governmental organizations, a number of lawyers defending opponents of the Government or involved in activities for the defence of human rights are subjected to harassment by the security services - confiscation of their passports, arbitrary arrest and detention.

89. The cases reported to us include those of the lawyers Clement Nwankwo and Tayo Oyetibo, who were arrested on 19 August 1991 and questioned for four hours by the army secret services on their professional records and the reasons why they belonged to the Constitutional Rights Project. This Nigerian human rights organization set up in November 1990 is essentially concerned with promoting the independence of the judiciary. Femi Falana, a lawyer who is an active member of the committee for the defence of human rights and the national association of democratic lawyers, is said to have had his passport confiscated for no reason on 9 October 1991, as he was on the point of leaving to attend a conference on human rights in Africa organized by the Commonwealth in Zimbabwe. He had been arrested and detained several times in 1989, 1990 and 1991 for reasons connected with his professional activities; he was even the victim of a kidnapping by persons unknown on 8 April 1990, during which he was questioned about his political activities. Among other cases of arrests and detentions connected with the exercise of the legal profession or

membership in human rights organizations, we may mention those of Olisa Agbakoba, Clement Nwankwo, Chief Mike Ozekhome, Emmanuel Erakpotobor, Chief Gani Fawehinmi, Kester Tawari, Tunji Braithwaite and Alao Aka-Bashorun.

90. Fears have been expressed about the risk of government interference in the organization of the legal profession. The authorities have announced their intention of introducing a government system of renewable licenses in order to curb the growing amount of indiscipline among members of the legal profession, as the Minister of Justice is reported to have said in a statement on 7 August 1991. It will be recalled that according to principle 16 of the "Lawyer Principles",

> "Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics".

It must also be stressed that lawyers,

> "in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law" (principle 14).

Finally, according to principles 24, 27 and 28 of the "Lawyer Principles", their professional associations shall be self-governing, their executive bodies shall exercise their functions without external interference and disciplinary proceedings shall be brought before an impartial committee established by the legal profession or another independent authority and shall comply with the rules for fair trial.

Peru

91. According to the information received, Peru is at present one of the States in which judges and lawyers are most threatened, both by certain government services and by guerrilla movements. The pressure to which they are subjected is characterized by extreme violence. The case of Augusto Zuniga Paz is an illustration: this lawyer, who is also a member of the non-governmental Commission on Human Rights, had his left forearm shattered by a letter-bomb on 15 March 1992. It is said that the type of explosive involved is used exclusively by the army. This attack was connected with the case of the disappearance of a student, Ernesto Rafael Castillo Paez, in which members of the armed forces identified by Augusto Zuniga Paz were involved. In the preceding weeks the lawyer had received death threats, and his request for police protection had been rejected by the authorities.

92. Apart from grave violations against the civilian population, murders attributed to the Shining Path have also been reported, the victims including José Macera Tito, procurator, Cipriano Balbuena Diaz and Alejandro Quispe Torres, justices of the peace.

93. Of the cases of death threats reported to us, most of which are attributed to army personnel, attention has been drawn to those involving Guillermo Garcia Zamora, procurator, Moises Ochoa Giron, examining magistrate, Luis Almenara Bryson, President of the High Court of Justice in Lima, Recina Chavez Costa, procurator, Manuel Antonio Cordova Polo, procurator, Rogelio Galavan García, President of the Criminal Division of the Huancavelica High Court, Luis Paredes Macera, lawyer, Juan Luis Perez Coronado, lawyer, Roger Salas Gamboa, officer of justice at the Supreme Court of Peru, Oscar San Martin, member of the Lima High Court, and Imelda Tumialan, procurator.

94. It will be recalled that the authorities are required to protect the security of lawyers and judges (principle 11 of the "Judiciary Principles" and principle 17 of the "Lawyer Principles").

Russia

95. One of the cases transmitted to us seems to illustrate the way practices inherited from the past hamper the operation of the judiciary, at least as regards the lack of esteem in which judges are held and, the influence exercised by the police. One obviously has to be careful about drawing hasty conclusions from a case when for lack of information on current measures and practices, one does not know whether it is an isolated one or not.

96. Tamara G. Tarnopolskaya, a judge of the people's court in the Lyublin district of Moscow, had a case before her in which two young people were prosecuted for hooliganism and resisting police arrest on 25 January 1991. According to the defendants, the police suddenly appeared in their flat and after an altercation killed a female companion of theirs. By a decision dated 12 September, following the production of conclusive evidence, the judge not only dismissed the case, but also sentenced the police officers for drunkenness on duty, illegal entry and unjustified use of force. It is alleged that throughout the inquiry the judge was subjected to pressure by the police and by members of Moscow City Council, a body responsible among other things for the election of people's judges, trying to persuade her that the defendants were guilty. She also received telephone threats of physical violence. After she gave her decision, her application to Moscow City Council for a new flat was rejected as a punishment.

Rwanda

97. Among the cases reported to us, we may mention the following: Joseph Kavaruganda, President of the Court of Cassation, whose house was seriously damaged by a grenade in October 1991, shortly after a number of government bills had been declared unconstitutional by the Court; Stanislas Mbonampeka and Felicien Ngango, defence counsel for Rwandese Patriotic Front sympathizers, who were subjected to serious threats both before and during the trial, in the form of invective hurled at them by the public inside and outside the court room and anonymous telephone calls, which led them to withdraw from the case; Felicien Mutalikanwa, a lawyer arrested on 9 October 1990 for complicity with the rebels, but who was in fact detained arbitrarily until 22 February 1991 because of his activities as legal adviser to a Burundi company.

B. Measures and practices that have served to weaken the safeguards of independence and protection for members of the judiciary and the legal profession during states of exception or in the administration of military justice.

Israel

98. According to several recent reports from non-governmental organizations on the system of military justice in the territories occupied by Israel, the administration of military justice contravenes international rules, in particlar as regards detainees' access to legal assistance. Lawyers regularly encounter major obstacles in trying to locate and then meet their clients during the first three or four weeks of their detention, a period during which 95 per cent of detainees make confessions, which are alleged to be obtained through frequent use of ill-treatment, and even torture.

99. Article 78 C of Military Directive No. 378 states that for security reasons or for the needs of the inquiry, the military authorities may forbid a lawyer to meet his client for a period of 30 days; furthermore, the written order that has to be produced in support of such a refusal is frequently not forthcoming. We have been told of the case of a lawyer who in these circumstances would systematically appeal to the Supreme Court, which never heard her complaints, because the refusal order would invariably be produced by the military authorities just before the hearing.

100. Furthermore, at the extension hearing after 18 days' detention, it is said to be standard practice for judges never to ask detainees if they want the assistance of counsel; their counsel has, however, the right to be present at this hearing under article 78 F of the above-mentioned directive, his presence being all the more important in that this is often his first opportunity to meet his client. It will be recalled that according to principle 2 of the "Lawyer Principles"

> "Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination ..."

Syrian Arab Republic

101. According to many reports received, the administration of justice under the state of exception that has existed in Syria since March 1963 contravenes the international rules on independence and protection, both in law and in practice, creating a serious danger of violations of the most fundamental freedoms.

102. Under article 5 of Decree-Law No. 47 of 28 March 1968, the Martial Law Governor, in this case the President of the Republic, is entitled to bring cases of violations of the special or martial laws before the State security courts; such violations cover a very wide field, since they include "verbal actions hostile to the objectives of the State", or conspiracy to commit such actions.

103. According to article 7 (a) of the Decree-Law,

> "The right to defence as prescribed in the relevant laws notwithstanding, State security courts are not required to follow judicial procedures stipulated in these laws during any of the phases of investigation, interrogation and trial".

It is alleged that this restriction on the exercise of the rights of the defence gives rise to violations of human rights committed by the security forces, who alone have access to persons in detention.

104. In addition, article 8 of the Decree-Law forbids appeals against decisions by special courts. It may be true that the decisions rendered do not become final until they are ratified by the President of the Republic, but this amounts to a discretionary remedy and not an opportunity to appeal to an independent higher court.

105. These procedures are said to have been used 24 times since they were introduced. The last case concerned human rights activists tried for their activities as members of the Committee for the Defence of Democratic Freedoms and Human Rights (CDF). Fourteen persons, including two lawyers, who signed a statement by CDF published on the forty-third anniversary of the Universal Declaration of Human Rights, criticizing the way the presidential referendum had been conducted, were sentenced on 17 March 1992 by the State Security Court in Damascus to between 3 and 10 years' imprisonment with hard labour for spreading false information, receiving money from abroad and withholding information. They are Nizar Ben Ali Naif, Aktham Nouaisseh, Mouhammad Ali Habib, Afif Jameel Mezher, Bassam al-Sheikh, Thabit Mourad, Hassan Ali, Hussam Salameh, Jadee' Noufal, Yacoub Moussa, Samer Nouaisseh, Yaser Iskeef, Nazem Hussen and Nbeel Na'ous. The court consisted of three judges, including an army colonel. There were admittedly 12 lawyers for the defence, but they were prevented from meeting their clients outside the hearings. Furthermore, requests for the verification of allegations of torture were rejected, although two of the accused, Nizar Ben Ali Naif and Aktham Nouaisseh, showed the court obvious traces of torture. The hearings were held in camera, with the exception of the one on 17 March, which the families were able to attend. There is agreement among sources of information that the right to a fair trial guaranteed by international rules was not respected, particularly as regards the right to appeal to a higher court, the right to a public hearing, the right to effective defence and verification of allegations of torture.

106. The communications sent to the Special Rapporteur do in fact testify to the conflict between the administration of justice in the state of exception in Syria and the specific regime of independence and protection. It will be remembered in particular that according to principle 5 of the "Judiciary Principles", "everyone has the right to be tried by ordinary courts or tribunals using established legal procedures". The presence of a member of the armed forces among the judges making up the court in question obviously raises a problem of independence in relation to the "Judiciary Principles". In addition, principle 6 states that "the principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected". This safeguard is not confined to the proceedings, because the "Lawyer Principles", in particular, guarantee any person arrested or detained

the right to be assisted by a lawyer, who will if necessary be assigned to them (principles 5, 6 and 8) and who can at all times act freely and diligently (principle 14).

107. As we said in our previous report, this provision, "which is based on the same reasoning as that applied by the Inter-American Court of Human Rights in connection with habeas corpus, should prompt the Sub-Commission to consider the indefeasible nature of the rights of the defence as a means of guaranteeing respect for other indefeasible rights" (E/CN.4/Sub.2/1991/30, para. 20). The information transmitted to us in connection with this report confirms our opinion that the indefeasibility of the essential rights of the defence should be regarded as a fundamental safeguard for effective respect of human rights during a state of exception.

108. It should also be noted that according to the Human Rights Committee the provisions of the International Covenant on Civil and Political Rights make it clear that, apart from the fact that the trying of civilians by military or special courts should be very exceptional, the persons prosecuted are in any case entitled to a fair trial in accordance with article 14 of the Covenant (CCPR/C/21/Rev.1, General Comment No. 13 (21)).

109. Finally, with regard more specifically to the protection of lawyers, of whom there are two among those sentenced, it will be recalled that the "Lawyer Principles" guarantee lawyers, like other citizens, the right to freedom of expression. They have in particular:

> "The right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings." (principle 23)

United Kingdom of Great Britain and Northern Ireland

110. Many sources agree that pressure is put on the lawyers of persons arrested in connection with the anti-terrorist campaign. In its report following its visit to the United Kingdom in July-August 1990 (which, it may be said, was made public at the request of the Government), the European Committee for the Prevention of Torture states:

> "As regards more particularly the right of access to legal advice, it is important for police officers to refrain from discouraging in any way the exercise of this right by detainees." (Council of Europe, CPT/Inf(91)15, para. 218)

111. According to information received in connection with the present report, the pressure is generally indirect, in that it is applied to the lawyer by identifying him with his client, that is, with his cause. According to a survey made by lawyers and communicated to the members of the Committee Against Torture in November 1991, 143 of their clients out of 238 questioned between 1 March 1989 and 28 October 1991 reported threats by the Royal Ulster Constabulary (RUC) against their lawyers. There were even reports of death threats. The names of 20 lawyers subjected to intimidation, 17 of whom were threatened with death, have been transmitted to the Special Rapporteur, but he has been asked to preserve their anonymity for security reasons.

112. According to communications received from several non-governmental organizations, exercise of the rights of the defence is appreciably weakened by the emergency legislation (Section 14, Prevention of Terrorism (Temporary Provisions) Act 1989), which among other things authorizes the police to delay giving detainees access to the services of a lawyer.

113. It will be recalled that according to the "Lawyer Principles",

> "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials" (principle 8).

Furthermore, "Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference" (principle 16) and "where the security of lawyers is threatened ... they shall be adequately safeguarded by the authorities" (principle 17).

114. In our view, these provisions are all the more necessary when lawyers as a result of discharging their functions are identified with their clients or their clients' causes. This practice, which is forbidden by the "Lawyer Principles" (principle 18), makes lawyers vulnerable and seriously weakens the guarantees of protection, and hence the exercise of the rights of the defence.

115. It must be clearly stressed that the citing of these shortcomings in this report may not be used by anyone to legitimize the serious violations of human rights committed by armed groups, including the Irish Republican Army (IRA), particularly when acts of violence are perpetrated against the civilian population.

Turkey

116. It is now clearly recognized that access to the assistance of a lawyer represents, together with other rights such as the right to be able to contest the legality of one's detention before a court, an essential means of combating the use of torture. The restriction placed on the possibility of access to such assistance through the entry into force of the anti-terrorist law of 12 April 1992 is said to contribute to the persistence of the phenomenon of torture in Turkey. Several non-governmental organizations support this finding in a number of cases, including that of the lawyers Murat Demir and Bedii Yarayici, arrested in their office on 13 June 1991 during an enquiry into the activities of a banned armed organization, Devrimci Sol, several of whose members they had defended. They are reported to have been placed in solitary confinement and tortured at the political police headquarters in Ankara until 19 June, when they were able to speak to journalists and to denounce the abuses they had been subjected to. The Procurator-General denied them access to their lawyers and families. They were unable to meet their lawyers until 18 June, after the State Security Court had confirmed the legality of their detention under the anti-terrorist legislation and article 168 of the Penal Code. They were charged with having

acted as couriers for the banned organization, and no action has yet been taken on their complaints about the use of torture and the introduction of confessions obtained by that method.

117. Apart from the guarantees of access to the assistance of a lawyer set forth in principles 1 to 4 of the "Lawyer Principles" and, of course, the absolute prohibition of torture by international instruments, it will be recalled that according to principle 18 of the "Lawyer principles",

> "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions".

In addition, and this provision applies particularly in a state of exception "lawyers ... shall at all times act freely and diligently" (principle 14).

C. Measures and practices that have served to weaken the application of the statutory safeguards and the tenure of judges

Australia

118. Despite a judiciary with a strong tradition of independence and despite firm legal safeguards, the Law Society of New South Wales has pointed to a number of signs of an erosion in the guarantees of independence. While, from its point of view, such infringements cannot be likened to the crude and violent threats to the judiciary mentioned in our previous report, they are none the less disturbing.

119. These signs are said to be noticeable in certain areas the Law Society describes as crucial to the independence of the judiciary, such as financial security and "adequate" remuneration for judges, something that is difficult to ensure, especially in view of the high incomes earned by lawyers; or security of tenure, which has been challenged a number of times since 1980. The Law Society is now conducting a thorough examination of the situation.

France

120. Despite current reforms (see chap. I), professional organizations of the judiciary in France complain about what, in their view, is still too great a hold by the executive over the operation of the courts. They contend that this anomalous situation is rooted in the present Constitution, dating from 1958, which weakens the safeguards of independence for judges and reduces the "judicial power" to the level of a mere "judicial authority".

121. The most significant criticisms bear on two points:

(i) An insufficiently independent Supreme Council of Justice, which is competent to nominate judges (but not procurators); its opinion is only advisory (except in the case of the senior judges). The nine members of the Council are, in the final analysis, all appointed by the executive;

(ii) The hierarchical situation in the Government Procurator's Department, which means that the Minister of Justice is the head of

all the procurators, and is thus ultimately responsible not just for criminal policy in general but also for the prosecution in each and every criminal trial.

122. The professional organizations of the judiciary are thus calling for a reform of the Constitution to improve the statutory safeguards and to secure greater independence for procurators in instituting criminal proceedings.

Japan

123. According to information received more particularly from the Japan Federation of Bar Associations, judges are appointed to the Supreme Court by agreement between the Prime Minister and the President of the Supreme Court, who is himself appointed by the Cabinet under article 41 of the Court Organization Law. This practice has reportedly been criticized on the grounds that it could well bring the Supreme Court under the control of the executive and the legislature.

124. As to the selection of judges in the lower courts, who are chosen from graduates of the Supreme Court's Legal Research and Practice Institute, 40 candidates have been rejected without any explanation since 1970, apparently because they belonged to the Young Jurists Association, an organization that claims to be left-wing in its outlook. The same problems are said to have arisen with regard to renewal of the tenure of some judges in the lower courts; tenure is renewed every 10 years.

125. In respect of promotion, the Japan Federation of Bar Associations reports the case of a judge who was not promoted beyond the family courts for 12 years because he ruled that the self-defence forces were unconstitutional, and the case of another judge who was transferred to the lower courts for 12 years for ruling that a prohibition on door-to-door canvassing by trade unionists during electoral campaigns was unconstitutional.

126. Discriminatory practices have also been reported in regard to salary increases. Automatic increases in salary have been challenged in the case of judges belonging to the Young Jurists Association and the National Association for Discussion of Judges, and the Japan Federation of Bar Associations estimates that the delays involve a sum of 2 million yen every year.

127. A large share of the responsibility for these practices is attributed to the General Secretariat of the Supreme Court, which is said to dominate the Supreme Court's Council of Judges and to be in de facto control of the organization of justice. The reason for this situation is that the members of the Supreme Court, who are recruited from among lawyers and legal experts as much as from among judges, do not all have the necessary qualifications for the organization of justice, unlike the members of the General Secretariat, which is made up exclusively of specialists in the subject.

128. The "Judiciary Principles" state that "It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary" (principle 1); in the selection of judges "there shall be no

discrimination ... on the grounds ... of political or other opinion" (principle 10); and the system of promoting judges "should be based on objective factors, in particular, ability, integrity and experience" (principle 13).

Lesotho

129. Certain initiatives by the Law Society of Lesotho have had a positive impact in safeguarding the independence of the judiciary (for example, securing annulment by the Court of Appeal of the Government's 1985 decision to appoint civil servants as judges) and the independence of lawyers (for example, securing the annulment in 1988 of a decree issued during the state of emergency whereby the police were authorized to interfere in the work of lawyers, Law Society of Lesotho v. Minister in charge of Defence and Internal Security and others). These developments are to be welcomed.

130. However, the Law Society of Lesotho has reported some practices that are inconsistent with the specific regime of independence of the judiciary. For example, judges are appointed on the basis of two-year contracts, and most legal practitioners suspect that the judges appointed in this way will be ready to comply with the wishes of the executive, so as to get their contracts renewed, in breach of principle 10 of the "Judiciary Principles", stating that "Any method of judicial selection shall safeguard against judicial appointments for improper motives", as well as principles 11 and 12, concerning security and guaranteed tenure. The Law Society of Lesotho takes the view that this weakening of safeguards could be avoided if the Government were required to consult members of the legal profession about appointments, a practice recommended in the draft declaration (paras. 9-12).

131. Lastly, the Law Society of Lesotho considers that the statutory conditions relating to judges and, more generally, their independence, as well as satisfactory administration of justice and respect for human rights, are seriously weakened by the financial restrictions imposed on the judicial system because the State attaches priority to economic development and national security, and also because debt servicing takes up a large part of the nation's budget. The Law Society's view is that, in the circumstances, the current reforms should be accompanied by a strengthening of the judicial system. It will be remembered that principle 7 of the "Judiciary Principles" affirms that "It is the duty of each State to provide adequate resources to enable the judiciary to properly perform its functions."

Peru

132. A number of sources, widely reported in the media, agree that, after the "civilian coup d'état" on 5 April 1992, 133 judges were dismissed without any disciplinary proceedings, on the pretext of "raising the moral standards" of the judiciary. They were accused by the authorities - described as the "de facto authorities" - of corruption and of being soft or indeed indulgent towards the guerrilla movements.

133. The executive's inroads into the safeguards of the judiciary's independence are said to have led to protests in the form of the resignation

of a number of high-ranking judges, including Luis Portugal Rondon, President of the Supreme Court. Moreover, for the same reason, the National Association of Judges sent an open letter about the situation to the Organization of American States, condemning the constraints that had brought a large number of judicial inquiries to a halt, the intimidation of judges, as for instance when Judge Arturo Zapata's home was searched without a warrant, and the seizure by the army of court documents concerning the trial of Abimael Guzman Reynoso, the Shining Path leader, on the grounds that he had been "let off" by his judges.

134. The executive's desire to "raise moral standards" has also been seriously questioned because some judges very seriously implicated in corruption are said not to have been affected by the dismissals and to be even likely to be promoted. The executive's attitude is regarded as all the more disturbing in that some judges conducting inquiries embarrassing to the "de facto authorities" have reportedly been dismissed, as in the case of Judge Carlos Escobar Pinedo, who was handling the proceedings relating to the massacre of peasants in the community of Cayara and also conducting inquiries into disappearances in the areas of Ayacucho, Huancavelica and San Martin.

135. While corruption among the judiciary is clearly an important matter, it is no less obvious that it must be fought in accordance with legal procedures and international rules, particularly the specific regime of independence and protection, lest the judiciary as a whole and hence democracy itself be plunged into lawlessness.

136. It will be remembered that "It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary" ("Judiciary Principles", principle 1) and that the authorities must ensure that the judiciary decide matters before them "without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason" ("Judiciary Principles", principle 2) and prosecutors "without intimidation, hindrance, harassment" ("Prosecutor Principles", principle 4). In addition, judges have guaranteed tenure ("Judiciary Principles", principle 12) and may be suspended or removed only for reasons of incapacity or behaviour that renders them unfit to discharge their duties (principle 18); in any case, in the event of a charge or complaint, they are entitled, like prosecutors, to a fair hearing ("Judiciary Principles", principles 17-19; "Prosecutor Principles", principle 21).

People's Republic of China

137. According to information contained in a report transmitted by the International Federation of Human Rights and prepared by a mission of French lawyers who visited China in October 1991, a number of factors have helped to weaken the statutory safeguards for the judiciary. Article 126 of the 1982 Constitution stipulates that "members of the courts shall exercise their jurisdictional powers with complete independence and shall not be subjected to pressure by any State body or by an individual", yet in actual court practice judges and procurators have to apply both the law and the directives of the Communist Party, whose leading role throughout society is affirmed in the preamble to the Constitution. Moreover, the Constitution makes it a duty of

the Chinese people to improve, under the control of the Party, the functioning of socialist institutions, including the judicial system. The mission noted that there was no body to regulate or at least give an opinion on matters pertaining to judges' professional careers and to protect them from outside influence and pressure; indeed, it pointed to the supervision and control exercised over judges by the Communist Party, to which the vast majority of the judicial hierarchy belong, and by the Department of Public Security. This is said to be particularly so with regard to the appointment of judges and procurators and the functioning of the courts. The latter aspect is regulated by political and judicial commissions (zhengia weiyuanhui), set up in each District and consisting essentially of the presidents of the local courts, Party leaders and representatives of the Department of Public Security, who adopt recommendations on how to handle overall situations and also particular cases. In the mission's view, these bodies, which are likely to interfere both before and after the hearings, make the proceedings purely a matter of form, in which there is no autonomy, in an open breach of the principle of the independence of the judiciary.

138. The mission is said to have been told that the regulations on the judiciary are the subject of a reform bill, but it was unable to find out what the bill would be about or the date on which it would be enacted, and the mission feared that the reform was being "shelved". Furthermore, the legal training for judges has been officially recognized as inadequate and the large majority of judges have no legal qualifications. The mission's findings are that judges and procurators, with little or no training, recruited on a discretionary basis, subject to the influence of the Party and the Department of Public Security, and governed by a strong internal hierarchy, are not at the present time in a position to guarantee that citizens can exercise their rights.

139. It will be remembered that principle 1 of the "Judiciary Principles" affirms that "The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution of the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary". This means that the judiciary must decide matters before them "without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason" ("Judiciary Principles", principle 2). Again, principle 10 says that "Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law" and, in the selection of judges, there shall be no discrimination on grounds of "political or other opinion".

140. Moreover, according to a communication from the Hong Kong Bar Association, the safeguards for the independence of the judiciary and the legal profession contained in the Joint Sino-British Declaration on the status of Hong Kong as from 1 July 1997 are considerably weakened by some provisions of the Basic Law ratifying the Declaration, adopted at the third session of the Seventh National People's Congress and promulgated on 4 April 1990.

141. The worst threat is said to lie in article 158 of the Law, whereby Hong Kong courts would be obliged to submit a request for a preliminary ruling to the Standing Committee of the National People's Congress (a political body)

for any interpretation of the Basic Law relating to fields within the competence of the Central People's Government or concerning relations between the central authorities and the special administrative region of Hong Kong - the broadest possible field of application ratione materiae. The Declaration, on the other hand, lays down the principle of the independence of the Hong Kong courts and non-interference in the administration of justice, in keeping with principle 1 of the "Judiciary Principles".

Yugoslavia

142. Various sources, basing themselves on information in the official gazette of the Republic of Serbia, report the dismissal by the Serbian Parliament of nearly 200 judges of Albanian origin between September 1990 and July 1991. Some of them were dismissed without explanation, others for incompetence or for breaking the law, but it is alleged that the only real reason for their dismissal was their ethnic origin. They were all replaced by Serbian or Montenegrin judges and a number of courts, including the Supreme Court of Kosovo, and five procurator's offices, including that of the Provincial Prosecutor, were closed down by the Serbian Parliament. It is also contended that the Parliament exceeded its powers, since it is not entitled to dismiss judges. No disciplinary procedure was followed: apart from the lack of any reason in some cases, most of the judges learned that they had been dismissed only when they saw their names published in the official gazette. A list of the judges in question is contained in the annex.

143. Clearly, such measures and practices are a complete breach of the special regime of independence for the judiciary. It will be remembered that, in the selection of judges, "there shall be no discrimination ... on grounds of ... national ... origin" ("Judiciary Principles", principle 10) and the selection criteria exclude "any discrimination against a person on the grounds of ... national ... or ethnic origin" ("Prosecutor Principles", principle 2 (a)). Moreover, in the case of judges, "It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary" ("Judiciary Principles", principle 1). This provision is particularly important because in the case in question an essential safeguard for such independence was disregarded, namely, the principle that judges have guaranteed tenure until a mandatory retirement age or the expiry of their term of office ("Judiciary Principles", principle 12). As to discipline, it should be noted that "Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties" ("Judiciary Principles", principle 18) and that both judges and procurators have the right to a fair hearing ("Judiciary Principles", principles 17, 19 and 20) and ("Prosecutor Principles", principle 21).

D. Measures and practices that have served to weaken the application of the safeguards relating to access to the assistance of a lawyer or to the practice of the profession

Georgia

144. We have been informed by the Lawyers Committee for Human Rights of the case of Kartlos Garibashvili, a lawyer in Tbilisi. In February 1991 he was asked to defend the opposition leader Dzaba Ioseliani but was allegedly

prevented from assisting his client because of a series of obstacles placed in his path by the authorities: he had to wait six days before obtaining permission from the Bar Association to take on the case; the deputy procurator dealing with the investigation refused for a further five days to authorize a meeting with his client; after the first meeting, the same deputy procurator repeatedly refused to authorize further meetings or to inform him of the charges against his client; an appeal to a higher level was rejected, and the deputy procurator requested his dismissal from the Bar Association. The case was withdrawn from him on 21 March. Although the accused's family has confirmed his appointment as counsel for the defence, he has so far been unable to meet the defendant a second time.

145. Among other provisions of the "Lawyer Principles" guaranteeing access to the assistance of a lawyer, it will be recalled that in accordance with principle 7 "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than 48 hours from the time of arrest or detention". Moreover, principle 8 states that all detained or imprisoned persons shall be allowed to be visited by a lawyer.

People's Republic of China

146. According to the report by a mission of lawyers referred to above, although there are currently some 50,000 lawyers in China, 20,000 of them working half-time, who have acted in over 1,500,000 criminal cases since 1979, the rights of the defence and the function of lawyers have still to be organized. This is essentially because lawyers are under a twofold constraint: firstly, they have to obey the administration, to follow the Communist Party line and to carry out the Party's orders, and secondly, they have to act as agents not so much of their clients, as of the communist social order.

147. Lawyers are said to practise under the control of both the Ministry of Justice, which runs the offices of the professional organizations, and of the People's Congress in each town, which draws up the code of professional standards and ethics and the rules of procedure of professional organizations (authorized by the provisional order relating to lawyers which came into force on 1 January 1982). Lawyers also practise under the direct control of the Party; thus, under article 3 of the rules of procedure published on 1 February 1988 by the Peking Lawyers Association, "lawyers must be loyal to the four fundamental principles (the leadership of the Communist Party, people's democratic dictatorship, Marxism-Leninism-Mao Zedong thought, and the socialist road); they must be guided by the Party line and constantly align themselves on the Party's central leadership".

148. According to these texts, lawyers are not just required to defend individuals, but also to perform a social and educational mission and to monitor the enforcement of the law and compliance with regulations, as agents of the State; article 4 of the rules referred to above stipulates, moreover, that "lawyers are State jurists". Accordingly, they may not contest the implementation of a law before a court, but merely debate its interpretation or use the procedures available to the people before the local, municipal and regional assemblies.

149. In addition, the independence of lawyers is said to be considerably restricted by the duties imposed on them by the codes of professional standards and ethics or regulations, such as the requirement for them to show humility, not to engage in provocation and to be brief, which may be interpreted in a variety of ways, or the requirement for them to submit their arguments in advance to the party official for consideration. It is also reported that an internal rule requires them never to plead not guilty, failing which they may be held liable for contempt of the Public Security Department or the judicial officers who prepared the charges.

150. Lapses from these duties are said to entail punishment, such as non-renewal of the permit which has to be obtained each year. For example, we have been informed of the case of Gao Xiaofeng and Ji Suwan, who were refused permits after they had defended Chen Ziming, an economist who was sentenced to 13 years' prison and four years' civil disqualification for his role in the pro-democracy movement, and of various forms of harassment: for example, the case of Sun Yachen, who has allegedly had difficulty in finding housing since he defended a journalist, Wang Juntao, who was sentenced to 13 years' prison for his involvement in the pro-democracy movement.

151. Here again, there is a blatant contradiction between the situation as described to us and the specific regime of protection. In particular, it will be recalled that in accordance with principle 13 of the "Lawyer Principles", the duties of lawyers include advising clients as to their legal rights and obligations, assisting them in every appropriate way and taking legal action to protect their interests. Lawyers are required moreover to "seek to uphold human rights and fundamental freedoms"; to do so, they "shall at all times act freely and diligently" (principle 14). The authorities for their part are required to ensure that lawyers "shall not suffer or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics" (principle 16). Lastly, lawyers shall enjoy civil and penal immunity (principle 20).

Chad

152. Several reports concur as to the extreme difficulty, for a number of reasons, of implementing the safeguards regarding access to the assistance of a lawyer. First of all, there are said to be no more than five lawyers, all of whom have their practices in the capital, for a population of five and a half million, which is quite clearly a major numerical obstacle to the satisfactory exercise of the rights of the defence, and in particular of the safeguards in criminal justice matters. It should be mentioned that Chad had six lawyers until the murder, on 16 February 1992, of Joseph Behidi, who was also Vice-President of the Chadian Human Rights League, who may have been murdered because of his activities in defence of human rights or for having defended the newspaper N'Djamena Hebdo in a slander case brought against it by two members of the armed forces.

153. A further obstacle to obtaining the assistance of a lawyer is said to be the precariousness of the guarantees for the functioning of lawyers. Lawyers are appointed by a decree from the President of the Republic and are thus liable to dismissal by another presidential decree. They practise under the direct administrative control of the Attorney-General, a fact which

considerably hinders their independence; this is all the more so because the only "professional organization" available to represent their interests is the "Group of Chadian Lawyers", an informal institution that has no resources, statute, code of practice or rules of procedure. Lastly, although a legal aid office exists on paper, it has never operated for lack of means and of lawyers.

154. Some non-governmental organizations that investigated this situation recently concluded that citizens were unable to obtain access to their judges and that on account of the lack of means of communication and of financial resources, the precariousness of the judicial system as a whole and the lack of lawyers, the law was virtually non-existent in Chad. The organizations nevertheless noted a sincere wish on the part of lawyers to free themselves from political control and to organize themselves professionally for the benefit of the citizen; every encouragement should of course be given to this movement.

155. It will be recalled that the "Lawyer Principles" include a whole section devoted to access to buyers, and in particular requiring Governments to "ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons" (principles 1 to 4). Governments are also required to ensure that lawyers are able to perform all their professional functions "without hindrance" (principle 16). Lastly, lawyers, "like all other citizens are entitled to freedom of expression, belief, association and assembly". In particular, they have the right to take part in public discussion of matters concerning the law, the administration of justice and human rights and to join or form organizations, and in particular professional associations (principles 23 and 24).

E. Measures and practices that have weakened the application of the safeguards relating to the freedom of expression and association of lawyers

Myanmar

156. Reports received from several sources indicate beyond any doubt the existence of practices that constitute blatant violations of the safeguards for the freedom of expression and association of lawyers. Numerous lawyers are allegedly detained for having expressed an opinion, taken part in a demonstration or played an active role in an opposition party. Among the cases reported, we may note those of Bawk La, arrested in October 1988 for belonging to the National League for Democracy, who was allegedly tortured; Chit Ti, Khin Maung Thein, Khin San Hlaing, Ohn Kyi, San Win, Saw Hlaing and Thaung Mying, arrested in September 1990 for taking part in demonstrations, and Khin Maung Than, Ko Yu, Min Zeya, Nan Zing La, Nay Min, Sein Nyo Tun, Thein Han, Htay Aung, Kyaw Zaw, Maung Maung, Tin Aye Kyu and Tway Tint, arrested for exercising their right to freedom of opinion and expression. The non-governmental organizations that transmitted the communications on these cases say that their information is fragmentary because the policy of repression has made Myanmar impenetrable.

157. It will be recalled that principle 23 of the "Lawyer Principles" in particular guarantees lawyers, like all other citizens, the right to freedom of expression, belief, association and assembly.

Turkey

158. A number of reports agree concerning the prosecution, arrest or detention of several lawyers belonging to the Human Rights Association (HRA) for acts committed in the performance of their functions by which they called in question the conduct of the authorities. The attitude adopted by the authorities towards them is said to constitute punishment for their professional "activism" on behalf of the rule of law and respect for human rights. Such, for example, is the case of Ayhan Aksözek, Vice-President of HRA, who was arrested on 24 October 1990 after visiting a client held incommunicado at police headquarters in Kars, where he had allegedly been ill-treated and suffered a heart attack. He was released on 21 February 1991. Zübeyr Aydar, Vice President of HRA, is said to have received threats since he began, in 1989, to investigate the existence of mass graves in the vicinity of Siirt, in which the victims of army atrocities are allegedly buried. Seven lawyers - Bahri Beelen, Engin Cinmen, Salih Gökhan Düren, Resat Kadayifcilar, Ayse Oguzer, Ugur Soylemezoglu and Hasan Urel, all active members of HRA - were charged with insulting the procurator in May 1991, after they had claimed in 1988, in connection with a case in which they were joint defending counsel, that torture was practised in the offices of the Procurator of the State Security Court in Ankara. They were all acquitted on 18 December. On 4 January Hûsnu Ondul, President of HRA and three other lawyers are said to have been arrested after protesting against statements by the Procurator-General of the State Security Court in Ankara. They were held incommunicado until 14 January. Hûsnu Ondul was then charged with belonging to an organization banned under anti-terrorist legislation. He was acquitted on 17 September by the State Security Court. The other cases reported to us include those of Ahmet Zeki Okçuoglu, Mustafa Ozer, Hasan Hüseyin Reyhan, Hasin Sahin and Gürbüz Ozaltinli.

159. Apart from the provisions of principle 23 of the "Lawyer Principles" mentioned above, it will be recalled that under principle 14, the duties of lawyers include seeking to uphold human rights and fundamental freedoms recognized by national and international law.

Notes

1/ See Report of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August-7 September 1990 (A/CONF.144/28), instrument 3.

2/ See Report of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, sales No. E.86.IV.1) and General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 and the Compilation of international instruments on human rights, chap. G.38 (United Nations publication, sales No. E.88.XIV.1).

3/ See Report of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August-7 September 1990 (A/CONF.144/28), resolution 26.

ANNEX

Yugoslavia - Kosovo

I. LIST OF COURT PRESIDENTS AND JUDGES REMOVED FROM OFFICE 1/

Town of GJILAN: Ilaz KRYEZIN, Xhymshit XHYMSHITI, Rejik HALILI, Ymen HURUGLICA, Musa MUSTAFA, Kadri SYLA, Shefget XHELILI, Ramush ADEMI, Myrvete ISMAJLI, Emine SALIHU, Shagir BEHRAMI. Town of MITROVICE: Salari SELMANI, Namon MAROVCI, Emine MUSTAFA, Xhevdet ABAZI, Elhame KELMENDI, Osman TMAVA, Beshir MOHOLLI, Halil DERGUTI. Town of LIPLJAN: Sinan JASHARA, Mirushe LLUGIQI, Rrrahman RATKOCERI, Ekrem AGUSHI, Besim KOLSHI. Town of KACANIK: Bedri BERISHA, Nasre KRASNIQI, Selim IDRIZI, Habib LIVAREKA, Vehbi KASHTANJEVA, Mustafe DARDHISHTA, Fatmir BAJRAKTARI. Town of DECANI: Isa DEMAKU, Sali QEKAJ, Syle LOKAJ, Safete TOLAJ, Hasan RIZA, Haki BALAJ. Town of FERIZAJ: Islam MUSA, Dalip BEGA, Ramadan SHABANI, Rifat AVDULLAHU, Isak NEZIRI, Abdyrrahim ISLAMI, Adem SEFEDINI, Isuf HAKIU, Imri SEJDA. Town of SUHAREKE: Idriz ELSHANI, Ajshe BASHIQ, Iashar KABASHI, Xhevdet ELSHANI, Sadik KUGI. Town of GLLOGOVC: Skënder ZARIQI, Sefer GJEKAJ, Avdi HAXHAJ, Arif HASANI, Ibrahim DOBRUNA. Town of PRISTINA: Baki KRASNIQI, Ali LATIFI, Zenel HAJDARI, Xhevat BERISHA, Hilmi ZHITIA, Shefki SYLA, Bashkim LATIFI, Selatin AHMETI, Adem AJVAZI, Muhamet SHALA, Bajram TMAVA, Suzana SEJDIN, Lirije QOKU, Burbuge HATIFI, Vjollea CANHASI, Garajfila BYTYQI, Hazbije RAMADANI, Nezir BYTYQI, Melika GASHI, Nuhi UKA, Xhavit KRASNIQI, Veton KAJTAZI, Shemsije SHAHOLLI, Sanije MUQOLLI, Fehmi SHALA, Ramiz KRASNIQI, Ramadan JASHARI, Mejreme ZEKAJ, Mustafa SELIMI, Faik HOXHA, Lushe CAMAJ, Ilaz KRASNIQI, Have AHMETAJ, Naim HALITI. Town of PEJE: Gani KELMENDI, Ali AHIU, Esat SHALA, Abdurrahman MULLA, Hrzir AVDIU, Semim BERISHA, Haki ADEMAJ, Whelal RADONJIQI, Sudan GORANI, Hidajete VESELI, Bujar HOXHA, Bajram REXHAJ, Kadri PREKAJ, Mibiene BEGOLLI. Town of VITI: Ramadan AVDU, Dron SIMONI, Sherif SHERIFI, Idriz SYLA, Ekrem PIRRA. Town of SKENDERAJ: Rifat ISMAJLI, Azemine NIMANI, Agif TAHIRI, Avdullah MECINAJ, Gani AVIDIU. Town of DRAGASH: Kojqin VENBIJA, Ragip BAJRA, Sefediu BAJRAKTARI, Fahri TRESHNJAKU. Town of MAHISHEVE: Emrush KASTRAZ, Dibran BUQDJ, Imer KRASNIQI, Faik HALILEJ, Demush KRASNIQI. Town of PODUJEVO: Aziz PODVORICA, Rexhej FUSHA, Shaban GANIU, Bedri KRASNIQI, Muharrem SADIKU, Mehmet ENCINI, Sabit CITAKU, Sahit SYLEJMANI, Jakuj LLUGALIJA. Town of KAMENICE: Menin SYLAJ, Jusuf VEHBIN, Shaban SPAHIN. Town of PRIZREN: Hashim COLLAKU, Hezer DUJA, Masar PIRANA, Fadil NUSHI. Town of KLINE: Haxhi DERGUTI, Azem MARMULLAKU, Augustin LAZRAJ, Bedri GODANCI. Town of RAVOHEC: Rasim ZLLONOGA, Agim METBALA, Dalip KRASNIQI, Mihedin BEKERI, Burham BOSHNJAKU. Town of VUCITRN: Emrush POTOKU, Avni MAGJUNI, Begir HALILI. The president and judges of Kosovo Supreme Court: Tadej REDIGI, Halil HALILAJ, Qerim METAJ, Halil KELMENDI. Judges of Kosovo Regional Court: Elez HOXHA, Bilana REXHIQI. The president and a judge of the Court of Associated Labor: Shaban KAJTAZI, Adil FETAJU

II. LIST OF GOVERNMENT PROCURATORS REMOVED FROM OFFICE

Ismet KABASHI, Haki LECAJ, Skënder MORINA, Reshat MIDAKU, Qemaje ZHUBI, Nexhat AJRO, Osman KRUEZIN, Bademe SLLAMNIKU, Sevdije MORINA, Sabit MALIQI, Hasan SADIKU, Ilaz SAHITI, Flamur KELMENDI, Naser HYSAJ, Gëzim BALOKU, Hajriz LUBISHTANI, Zyhra ADEMI, Ali REXHA, Halil ARAGAJ, Osman MEHMETI, Vaxhid IDRIZI, Adem ISAKU, Fazli MUSHKA, Ekrem SHABANI, Shahin BAJGORA, Ismet DJKANI, Ali DEMIRI, Elez BERISHA, Halil NAZI, Musë TOLAJ, Hafir BYTYQI.

Note

1/ Sources: International Commission of Jurists and Lawyers Committee for Human Rights, based on the Official Gazette of the Republic of Serbia No. 53/90 of 27 September 1990; No. 6/90 of 23 October 1990; No. 16/90 of 5 December 1990; No. 22/90 of 31 December 1990; No. 30/91 of 29 May 1991; No. 43/91 of 20 July 1991; No. 44/91 of 25 July 1991; No. 46/91 of 31 July 1991.